

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Curtis Holmes,

Plaintiff,

- against -

J.E. Thomas, et al.,

Defendants.

14 Civ. 1248 (JGK)

MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

The petitioner has made an application to appoint counsel. The petitioner's motion is **denied without prejudice** because he has not yet made the required showing. The Court of Appeals for the Second Circuit has articulated factors that should guide the Court's discretion to appoint counsel to represent an indigent civil litigant under 28 U.S.C. § 1915. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986); Jackson v. Moscicki, No. 99 Civ. 2427, 2000 WL 511642, at *4 (S.D.N.Y. Apr. 27, 2000). For the Court to order the appointment of counsel, the plaintiff must, as a threshold matter, demonstrate that the claim has substance or a likelihood of success on the merits. See Hodge, 802 F.2d at 60-61. Only then can the Court consider the other factors appropriate to determination of whether counsel should be appointed: "plaintiff's ability to obtain representation independently, and his ability to handle the case without assistance in light of the required factual

investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity."

Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir.

1989). Although the petitioner has not yet made the required showing that his claim is likely to succeed on the merits, the Court will carefully review the papers submitted with respect to the defendants' pending motions to dismiss. If the Court determines on the basis of the papers that the petitioner's claim has a likelihood of success on the merits, then the Court can revisit whether the appointment of counsel is warranted. The plaintiff's application for the Court to appoint counsel is therefore **denied without prejudice** for failure to make the required showing at this time.

SO ORDERED.

**Dated: New York, New York
May 26, 2014**

_____/s/_____
John G. Koeltl
United States District Judge